STATE OF MICHIGAN

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

OFFICE OF FINANCIAL AND INSURANCE REGULATION

Before the Commissioner of Financial and Insurance Regulation

In the matter of

XXXXX
Petitioner

v **File No. 123211-001**

Blue Cross Blue Shield of Michigan
Respondent

Issued and entered
this 4th day of January 2012
by R. Kevin Clinton
Commissioner

ORDER

I. PROCEDURAL BACKGROUND

On September 1, 2011, XXXXX (Petitioner) filed a request for external review with the Commissioner of Financial and Insurance Regulation under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq*. The Commissioner reviewed the request and accepted it on September 9, 2011.

The Commissioner immediately notified BCBSM of the request and requested the information used in making in final determination. The Commissioner received BCBSM's response on September 20, 2011.

The issue in this external review can be decided by a contractual analysis. The Commissioner reviews contractual issues pursuant to MCL 550.1911(7). This matter does not require a medical opinion from an independent review organization.

II. FACTUAL BACKGROUND

The Petitioner receives health care benefits as an eligible dependent. Those benefits are defined in the BCBSM *Community Blue Group Benefits Certificate* (the certificate). *Rider CBC 30% NP* (the rider) amends the certificate to require a 30% copayment for nonpanel services.

On March 23, 2011, the Petitioner had a septoplasty1 (CPT code 30520) performed by XXXXX, MD. Dr. XXXXX is a nonpanel provider, i.e., he has not signed an agreement to provide services under the Petitioner's health care program. He also has not signed a participation agreement with BCBSM or agreed to accept BCBSM's approved amount as payment in full for his services.

Dr. XXXXX charged $9,800.00 for the septoplasty. BCBSM's approved amount for the procedure was $830.27. After applying a $250.00 deductible and a 30% copayment of $174.08, BCBSM paid $406.19, leaving the Petitioner responsible for a balance of $9,393.81.

The Petitioner appealed BCBSM's payment amount through its internal grievance process. BCBSM held a managerial-level conference on July 21, 2011, and issued a final adverse determination dated July 21, 2011.

III. ISSUE

Is BCBSM required to pay an additional amount for the septoplasty performed on March 23, 2011?

IV. ANALYSIS

Petitioner's Argument

The Petitioner had a septoplasty in 2008 from a panel provider but did not experience any relief. She states she chose Dr. XXXXX to perform the septoplasty in 2011 after she heard several favorable remarks about his qualifications. The Petitioner states she was informed that Dr. XXXXX was a nonpanel provider, but she chose him to perform the procedure anyway because she thought he was more qualified than the panel providers. The Petitioner believed there was no panel provider "who had extensive knowledge of the procedure that I needed."

The Petitioner indicated she called BCBSM several times before the surgery to verify that the procedure would be covered under her insurance and was told that it would be. She is seeking a re-evaluation of the claims and wants BCBSM to provide additional coverage for the surgery.

BCBSM's Argument

BCBSM states the certificate (p. 4.2) provides that BCBSM's payment is based on an "approved amount" for covered services. The certificate does not guarantee that charges will be paid in full, especially when covered services are rendered by nonparticipating providers like Dr. XXXXX.

1 Septoplasty is a corrective surgical procedure done to straighten the nasal septum, the partition between the two nasal cavities.

This chart shows Dr. XXXXX's charges and BCBSM's approved amount for the services:

Service	Amount Charged	BCBSM's Approved Amount	Balance
Septoplasty	$3,800.00	$830.27	$2,969.73
Operating room and surgical supplies	$3,500.00	$0.00	$3,500.00
Anesthesia by surgeon	$2,500.00	$0.00	$2,500.00
Totals	$9,800.00	$830.27	$8,969.73

BCBSM indicates that it denied coverage for the anesthesia charge because the surgeon administered the anesthetics instead of an anesthesiologist and so it is included in the payment for the surgery. The certificate states (p. 4.6), "If the operating physician gives the anesthetics, the service is included in our payment for the surgery." BCBSM also states it denied coverage for the surgical supplies because such charges are not payable as physician services. (See p. 4.26 of the certificate.)

To determine its maximum payment level for each service, BCBSM applies a "resource based relative value screen" scale (RBRVS). This is a nationally recognized reimbursement structure developed by and for physicians. The RBRVS reflects the resources required to perform each service, including physician time, specialty training, malpractice premiums, and practice overhead. BCBSM regularly reviews the ranking of procedures to address the effects of changing technology, training and medical practice.

BCBSM maintains there is nothing in the certificate language that requires it to pay more than its approved amount for these services if the procedure was performed by a nonparticipating provider.

Commissioner's Review

The Commissioner concludes that BCBSM covered the septoplasty according to the terms and conditions of the certificate and rider even though the Petitioner believes it should have paid more.

BCBSM pays only its "approved amount" for covered services. The certificate does not guarantee that charges will be paid in full. "Approved amount" is defined in the certificate

(p. 7.2) as BCBSM's maximum payment level (derived from the RBRVS) or the provider's charge for the covered service, whichever is lower.

BCBSM's maximum payment level for a septoplasty is $830.27; that amount is the same for both participating and nonparticipating providers. Since Dr. XXXXX is a nonpanel provider, the Petitioner is subject to both the nonpanel deductible of $250.00 (see p. 2.1 of the certificate) and the 30% nonpanel copayment under the rider. This table shows how BCBSM arrived at its payment of $406.19:

BCBSM's Approved amount	$ 830.27
Minus nonpanel deductible	($ 250.00)
Balance	$ 580.27
Minus 30% copayment on balance	($ 174.08)
BCBSM's payment	$ 406.19

Since Dr. XXXXX is also a nonparticipating provider, he is not bound to accept BCBSM's approved amount as payment in full for his services and he may bill the Petitioner for any difference between his charge and BCBSM's approved amount. Participating providers, however, have agreed to accept BCBSM's approved amount as payment in full for covered services provided to BCBSM members.

Under the Petitioner's health care plan, subscribers incur the least out-of-pocket cost if they receive services from panel providers or from providers who participate with BCBSM. Unfortunately, the Petitioner decided to have the surgery from a nonpanel and nonparticipating provider. The certificate (page 4.31) explains the consequences when a subscriber uses a nonparticipating provider:

> If the nonpanel provider is **nonparticipating**, you will need to pay most of the charges yourself. Your bill could be substantial. After paying the provider, you should submit a claim to us. If we approve the claim, we will send payment to the subscriber.
>
> * * *
>
> **NOTE:** Because nonparticipating providers often charge more than our maximum payment level, our payment to you may be less than the amount charged by the provider.

The Commissioner finds that BCBSM correctly processed the claims for the surgery.

V. ORDER

Blue Cross Blue Shield of Michigan's final adverse determination of July 21, 2011, is upheld. BCBSM is not required to pay any additional amount for the Petitioner's septoplasty procedure performed by Dr. XXXXX on March 23, 2011.

This is a final decision of an administrative agency. Under MCL 550.1915(1), any person aggrieved by this Order may seek judicial review no later than 60 days from the date of this Order in the circuit court for the county where the covered person resides or in the circuit court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.

R. Kevin Clinton
Commissioner